contention that a discharge in bankruptcy operated to relieve the bankrupt from an obligation of the sort considered in *Victor* v. *Victor, supra.* However it does not seem necessarily settled that such a contract with the element of contingency eliminated may not be made the basis of a *provable* claim. The Supreme Court, as above noted, in the *Dunbar* case suggested that perhaps such a contract should be considered as on the same basis as an alimony order, but the decision as to the non-provability of the wife's claim was based on its contingency. A case might very easily arise where it would be very unfortunate for the wife, or former wife, if she were not permitted to prove her claim, especially as to the sums in arrears. In the alimony cases the court held that such claims were not provable even as to arrearages, but in the *Dunbar* case, in which it was a contract that was the basis of the claim, that question was not passed upon. R. W. A.

THE SCOPE AND FUNCTION OF THE FEDERAL EMPLOYER'S LIABILITY ACT.—Three cases, arising under the Federal Employer's Liability Act, (35 Stat. at L. 65, chap. 149, U. S. Comp. Stat. Supp. 1909, p. 1171), and the amendment of April 5th, 1910, (36 Stat. at L. 291, chap. 143), were disposed of in a single opinion by the United States Supreme Court. In relation to the liability of interstate carriers by railroad for injuries incurred by railroad employees while engaged in interstate commerce, the statute abolishes the fellow-servant doctrine and the doctrine of assumption of risk, and it modifies the application of the doctrine of contributory negligence by the introduction of the rule of comparative negligence. The constitutionality of this statute was questioned. *Held,*—1st, that Congress, in the exercise of its power over interstate commerce, may regulate the relation of common carriers by railroad and their employees while both are engaged in such commerce; 2nd, that Congress did not exceed its power in that regard by prescribing the regulations which are embodied in the act in question; 3rd, that those regulations supersede the laws of the States in so far as the latter cover the same field; 4th, that rights arising under those regulations may be enforced, as of right, in the courts of the States, when their jurisdiction, as fixed by the local laws, is adequate to the occasion. *Mondou* v. *New York, N. H. & H. R. Co.* (1912), 32 Sup. Ct. 169.

Congress has the power to regulate the relation of master and servant as far as such relations are confined solely to interstate commerce. *Employer's Liability Cases,* 207 U. S. 463, 495; *Southern Ry. Co.* v. *United States,* 222 U. S. 20. (See note, 10 MICH. L. REV. 212.) As was said in the last above-named case, the power of Congress "to regulate interstate commerce is plenary, and competently may be exerted to secure the safety * * * of those who are employed in such transportation, no matter what may be the source of the danger which threatens it."

The doctrine of comparative negligence originated in Illinois, (see *Galena etc. R. Co.* v. *Jacobs,* 20 Ill. 478), but has since been overruled, (see *Penn. Coal Co.* v. *Kelly,* 156 Ill. 9). According to this doctrine, the employee's negligence, which contributed to his injuries, must be compared with that of his employer in determining the measure of his damages. GEORGIA CODE, 1895,

§ 2322, very closely resembles the provision of the Federal statute. See *Macon, etc. R. Co.* v. *Johnson*, 38 Ga. 409.

Among other things, it was objected that the statute, by depriving the carrier of the advantage of several of the rules of the common law, amounted to a deprivation of property "without due process of law"; but as was said in *Munn* v. *Illinois*, 94 U. S. 113, 134:—"A person has no property, no vested interest, in any rule of the common law."

In some of the States it has been held concerning statutes of a similar nature, that they offended against the Fifth Amendment to the Constitution of the United States, by arbitrarily placing certain carriers in a disfavored class and all their employees in a favored class, unless the application of the statute is restricted to those employees who are subjected to the peculiar hazards of moving trains. *Deppe* v. *Chicago, etc. R. Co.*, 36 Ia. 52; *Beleal* v. *Northern Pac. Ry. Co.* (N. D. 1906), 108 N. W. 33; *Bain* v. *Northern Pac. Ry. Co.* (Wis.), 98 N. W. 241. But similar classifications of railroad carriers and employees for like purposes, have been sustained in the courts of last resort in most of the States and in the Supreme Court of the United States. *Missouri Pac. Ry. Co.* v. *Mackey*, 127 U. S. 205; *Louisville & Nashville R. R. Co.* v. *Melton*, 218 U. S. 36; *Mobile, Jackson & K. C. R. R. Co.* v. *Turnipseed*, 219 U. S .35.

The laws of the United States supersede the laws of the States, in so far as they cover the same field; for necessarily that which is not supreme must yield to that which is. *Gulf, Colo., & S. F. Ry. Co.* v. *Hefley*, 158 U. S. 98; *Southern Ry. Co.* v. *Reid*, (1912), 32 Sup. Ct. 140; *Northern Pac. Ry. Co.* v. *Washington* (1912), 32 Sup. Ct. 160; *Southern Ry. Co.* v. *United States*, *supra*.

One of the principal cases had been heard before the Supreme Court of Errors of the State of Connecticut, (82 Conn. 373), and that court decided, on the authority of *Hoxie* v. *N. Y., N. H. & H. R. Co.*, 82 Conn. 352, that the enforcement of rights created by congressional acts was originally intended to be restricted to the Federal courts, and that the courts of the States are free to decline jurisdiction because the act of Congress is not in harmony with the policy of the State. The Supreme Court of the United States criticises this opinion severely, and says:—"When Congress, * * * adopted that act it spoke for all the people and all the States, and thereby established a policy for all. That policy is as much the policy of Connecticut as if the act had emanated from its own legislature, and should be respected accordingly in the courts of the State." The court quoted from *Clafin* v. *Houseman*, 93 U. S. 130:—"The laws of the United States are laws in the several States, and are just as much binding on the citizens and courts thereof as the State laws are." There "is no reason why the State courts should not be open for the prosecution of rights growing out of the laws of the United States, to which their jurisdiction is competent and not denied."

In *Southern Ry. Co.* v. *United States*, 222 U. S. 20, defining the scope and effect of the Safety Appliance Act, the opinion of the court was delivered by Mr. Justice VAN DEVANTER, who also delivered the opinion in the principal case. In a comment on the former case, (10 MICH. L. REV. 212) it was remarked that possibly the position maintained in that case might be

regarded as an indication of the adoption of a correspondingly advanced general policy. The opinion in the principal case fortifies that previous comment, and seems to indicate the court's responsiveness to the advancing needs of civilization. P. P. F.

CONTROL BY THE JUDICIARY OVER THE CHIEF EXECUTIVE OF A STATE.—The jurisdiction of the courts over executive officers, including governors of States, heads of executive departments of the general government, and others of a kindred nature, has given rise to questions of much difficulty, and especially is this true with reference to the control by the courts over the official action of the governors of the various States. It is settled beyond all controversy that courts cannot, by injunction, mandamus, or other process, control or direct the head of the executive department of the State in the discharge of any executive duty involving the exercise of his discretion. This necessarily follows from the constitutional division of the State government into three coordinate, distinct, and independent branches. Neither is responsible to the other for the manner in which it exercises its discretion in the performance of duties which are governmental or political in their character. Thus far there is no conflict of judicial authority. The conflict arises upon the question whether the rule stated is subject to the qualification that where duties purely ministerial in character are conferred upon the chief executive, and he refuses to act, or when he assumes to act, acts in violation of the constitution and laws of the State, he may be compelled to act, or restrained, as the case may be, by the courts at the suit of one injured thereby in his personal or property rights. Upon the application of this qualification the authorities are in direct and irreconcilable conflict.

Thus, in a recent case, we find the Supreme Court of Minnesota, after a gradual change of policy in regard to other executive officers, when called upon to decide the question of its power to grant a writ of certiorari to review the decision of the governor in removing a county official from office, holding that when duties are imposed by law upon the chief executive, purely ministerial in their nature, which do not necessarily pertain to the functions of the office, but which might have been imposed upon any other State officer, they are subject to judicial control. *State ex rel. Kinsella* v. *Eberhart* (Minn. 1911), 133 N. W. 857.

The history of the complete reversal of policy in that State is interesting as an exemplification of the present spirit of extensive judicial control. In *Rice* v. *Austin,* 19 Minn. 103, mandamus against the Governor was refused upon the ground that there was no distinction between ministerial and other duties imposed upon the chief executive, the departments of the State government being made separate, distinct, and independent by reason of the constitution. Upon the authority of this case, the court in *State* v. *Dyke,* 20 Minn. 363, where mandamus was sought against the State Treasurer and Secretary of State, extended the doctrine and held that the court could not control the actions of *any* member of the executive department. This was accepted as the law of the State in various decisions dating from 1874 until 1897, no distinction being made between the governor and other members of